

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN SENATE JUNE 2, 1999

AMENDED IN ASSEMBLY APRIL 27, 1999

AMENDED IN ASSEMBLY APRIL 15, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 794**

**Introduced by Assembly Member Corbett**

February 24, 1999

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An act to amend Sections 1985.3, 1985.6, and 2020 of the Code of Civil Procedure, to amend Sections 1560, 1561, and 1563 of the Evidence Code, and to amend Section 4055.2 of the Labor Code, relating to confidentiality.

LEGISLATIVE COUNSEL'S DIGEST

AB 794, as amended, Corbett. Subpoenas: personal records.

(1) Existing law provides for a subpoena duces tecum for the production of various kinds of defined personal records pertaining to a consumer, maintained by a witness, as defined. Existing law also provides for the procedure to subpoena employment records. These provisions also require that the date specified on a subpoena duces tecum for the production of personal records or employment records be not less than 15 days from the date the subpoena is issued.

This bill would revise and expand the definition of “personal records” and “employment records” to include electronic data and expand the definition of “witness” to include various health care professionals and postsecondary schools, as specified.

The bill would delete the requirement that the date specified on the subpoena duces tecum for the production of personal records or employment records be not less than 15 days from the date the subpoena is issued. The bill would also provide that when a subpoena duces tecum commands the production of business records for copying, specific information identifiable only to the deponent’s records system shall not be required. The bill would make other changes with respect to the production of business and employment records for inspection or copying.

(2) Existing law requires any party who subpoenas medical records in a workers’ compensation proceeding to send a copy of the subpoena to all parties of record in the proceeding, as specified.

This bill would make that provision applicable to any records.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1985.3 of the Code of Civil  
2 Procedure is amended to read:  
3 1985.3. (a) For purposes of this section, the following  
4 definitions apply:  
5 (1) “Personal records” means the original, any copy of  
6 books, documents, other writings, or electronic data  
7 pertaining to a consumer and which are maintained by  
8 any “witness” which is a physician, dentist,  
9 ophthalmologist, optometrist, chiropractor, physical  
10 therapist, acupuncturist, podiatrist, veterinarian,  
11 veterinary hospital, veterinary clinic, pharmacist,  
12 pharmacy, hospital, medical center, clinic, radiology or  
13 MRI center, clinical or diagnostic laboratory, state or  
14 national bank, state or federal association (as defined in



1 Section 5102 of the Financial Code), state or federal  
 2 credit union, trust company, anyone authorized by this  
 3 state to make or arrange loans that are secured by real  
 4 property, security brokerage firm, insurance company,  
 5 title insurance company, underwritten title company,  
 6 escrow agent licensed pursuant to Division 6  
 7 (commencing with Section 17000) of the Financial Code  
 8 or exempt from licensure pursuant to Section 17006 of the  
 9 Financial Code, attorney, accountant, institution of the  
 10 Farm Credit System, as specified in Section 2002 of Title  
 11 12 of the United States Code, or telephone corporation  
 12 which is a public utility, as defined in Section 216 of the  
 13 Public Utilities Code, or psychotherapist, as defined in  
 14 Section 1010 of the Evidence Code, or a private or public  
 15 preschool, elementary school, secondary school, or  
 16 postsecondary school as described in Section 76244 of the  
 17 Education Code.

18 (2) “Consumer” means any individual, partnership of  
 19 five or fewer persons, association, or trust which has  
 20 transacted business with, or has used the services of, the  
 21 witness or for whom the witness has acted as agent or  
 22 fiduciary.

23 (3) “Subpoenaing party” means the person or persons  
 24 causing a subpoena duces tecum to be issued or served in  
 25 connection with any civil action or proceeding pursuant  
 26 to this code, but shall not include the state or local  
 27 agencies described in Section 7465 of the Government  
 28 Code, or any entity provided for under Article VI of the  
 29 California Constitution in any proceeding maintained  
 30 before an adjudicative body of that entity pursuant to  
 31 Chapter 4 (commencing with Section 6000) of Division  
 32 3 of the Business and Professions Code.

33 (4) “Deposition officer” means a person who meets  
 34 the qualifications specified in paragraph (3) of  
 35 subdivision (d) of Section 2020.

36 (b) Prior to the date called for in the subpoena duces  
 37 tecum for the production of personal records, the  
 38 subpoenaing party shall serve or cause to be served on the  
 39 consumer whose records are being sought a copy of the  
 40 subpoena duces tecum, of the affidavit supporting the

1 issuance of the subpoena, if any, and of the notice  
2 described in subdivision (e), and proof of service as  
3 indicated in paragraph (1) of subdivision (c). This service  
4 shall be made as follows:

5 (1) To the consumer personally, or at his or her last  
6 known address, or in accordance with Chapter 5  
7 (commencing with Section 1010) of Title 14 of Part 3, or,  
8 if he or she is a party, to his or her attorney of record. If  
9 the consumer is a minor, service shall be made on the  
10 minor's parent, guardian, conservator, or similar  
11 fiduciary, or if one of them cannot be located with  
12 reasonable diligence, then service shall be made on any  
13 person having the care or control of the minor or with  
14 whom the minor resides or by whom the minor is  
15 employed, and on the minor if the minor is at least 12  
16 years of age.

17 (2) Not less than 10 days prior to the date for  
18 production specified in the subpoena duces tecum, plus  
19 the additional time provided by Section 1013 if service is  
20 by mail.

21 (3) At least five days prior to service upon the  
22 custodian of the records, plus the additional time  
23 provided by Section 1013 if service is by mail.

24 (c) Prior to the production of the records, the  
25 subpoenaing party shall do either of the following:

26 (1) Serve or cause to be served upon the witness a  
27 proof of personal service or of service by mail attesting to  
28 compliance with subdivision (b).

29 (2) Furnish the witness a written authorization to  
30 release the records signed by the consumer or by his or  
31 her attorney of record. The witness may presume that any  
32 attorney purporting to sign the authorization on behalf of  
33 the consumer acted with the consent of the consumer,  
34 and that any objection to release of records is waived.

35 (d) A subpoena duces tecum for the production of  
36 personal records shall be served in sufficient time to allow  
37 the witness a reasonable time, as provided in paragraph  
38 (1) of subdivision (d) of Section 2020, to locate and  
39 produce the records or copies thereof.

1 (e) Every copy of the subpoena duces tecum and  
2 affidavit, if any, served on a consumer or his or her  
3 attorney in accordance with subdivision (b) shall be  
4 accompanied by a notice, in a typeface designed to call  
5 attention to the notice, indicating that (1) records about  
6 the consumer are being sought from the witness named  
7 on the subpoena; (2) if the consumer objects to the  
8 witness furnishing the records to the party seeking the  
9 records, the consumer must file papers with the court or  
10 serve a written objection as provided in subdivision (g)  
11 prior to the date specified for production on the  
12 subpoena; and (3) if the party who is seeking the records  
13 will not agree in writing to cancel or limit the subpoena,  
14 an attorney should be consulted about the consumer's  
15 interest in protecting his or her rights of privacy. If a  
16 notice of taking of deposition is also served, that other  
17 notice may be set forth in a single document with the  
18 notice required by this subdivision.

19 (f) A subpoena duces tecum for personal records  
20 maintained by a telephone corporation which is a public  
21 utility, as defined in Section 216 of the Public Utilities  
22 Code, shall not be valid or effective unless it includes a  
23 consent to release, signed by the consumer whose records  
24 are requested, as required by Section 2891 of the Public  
25 Utilities Code.

26 (g) Any consumer whose personal records are sought  
27 by a subpoena duces tecum and who is a party to the civil  
28 action in which this subpoena duces tecum is served may,  
29 prior to the date for production, bring a motion under  
30 Section 1987.1 to quash or modify the subpoena duces  
31 tecum. Notice of the bringing of that motion shall be  
32 given to the witness and deposition officer at least five  
33 days prior to production. The failure to provide notice to  
34 the deposition officer shall not invalidate the motion to  
35 quash or modify the subpoena duces tecum but may be  
36 raised by the deposition officer as an affirmative defense  
37 ~~on~~ in any action for liability for improper release of  
38 records.

39 Any other consumer or nonparty whose personal  
40 records are sought by a subpoena duces tecum may, prior

1 to the date of production, serve on the subpoenaing party  
2 the witness, and the deposition officer, a written  
3 objection that cites the specific grounds on which  
4 production of the personal records should be prohibited.

5 No witness or deposition officer shall be required to  
6 produce personal records after receipt of notice that the  
7 motion has been brought by consumer, or after receipt of  
8 a written objection from a nonparty consumer, except  
9 upon order of the court in which the action is pending or  
10 by agreement of the parties, witnesses, and consumers  
11 affected.

12 The party requesting a consumer's personal records  
13 may bring a motion under Section 1987.1 to enforce the  
14 subpoena within 20 days of service of the written  
15 objection. The motion shall be accompanied by a  
16 declaration showing a reasonable and good faith attempt  
17 at informal resolution of the dispute between the party  
18 requesting the personal records and the consumer or the  
19 consumer's attorney.

20 (h) Upon good cause shown and provided that the  
21 rights of witnesses and consumers are preserved, a  
22 subpoenaing party shall be entitled to obtain an order  
23 shortening the time for service of a subpoena duces  
24 tecum or waiving the requirements of subdivision (b)  
25 where due diligence by the subpoenaing party has been  
26 shown.

27 (i) Nothing contained in this section shall be construed  
28 to apply to any subpoena duces tecum which does not  
29 request the records of any particular consumer or  
30 consumers and which requires a custodian of records to  
31 delete all information which would in any way identify  
32 any consumer whose records are to be produced.

33 (j) This section shall not apply to proceedings  
34 conducted under Division 1 (commencing with Section  
35 50), Division 4 (commencing with Section 3200), Division  
36 4.5 (commencing with Section 6100), or Division 4.7  
37 (commencing with Section 6200) of the Labor Code.

38 (k) Failure to comply with this section shall be  
39 sufficient basis for the witness to refuse to produce the  
40 personal records sought by a subpoena duces tecum.

SEC. 2. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) "Employment records" means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e), and proof of service as provided in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the employee is a minor, service shall be made on the minor's parent, guardian, conservator, or similar

1 fiduciary, or if one of them cannot be located with  
2 reasonable diligence, then service shall be made on any  
3 person having the care or control of the minor, or with  
4 whom the minor resides, and on the minor if the minor  
5 is at least 12 years of age.

6 (2) Not less than 10 days prior to the date for  
7 production specified in the subpoena duces tecum, plus  
8 the additional time provided by Section 1013 if service is  
9 by mail.

10 (3) At least five days prior to service upon the  
11 custodian of the employment records, plus the additional  
12 time provided by Section 1013 if service is by mail.

13 (c) Prior to the production of the records, the  
14 subpoenaing party shall either:

15 (1) Serve or cause to be served upon the witness a  
16 proof of personal service or of service by mail attesting to  
17 compliance with subdivision (b).

18 (2) Furnish the witness a written authorization to  
19 release the records signed by the employee or by his or  
20 her attorney of record. The witness may presume that the  
21 attorney purporting to sign the authorization on behalf of  
22 the employee acted with the consent of the employee,  
23 and that any objection to release of records is waived.

24 (d) A subpoena duces tecum for the production of  
25 employment records shall be served in sufficient time to  
26 allow the witness a reasonable time, as provided in  
27 paragraph (1) of subdivision (d) of Section 2020, to locate  
28 and produce the records or copies thereof.

29 (e) Every copy of the subpoena duces tecum and  
30 affidavit served on an employee or his or her attorney in  
31 accordance with subdivision (b) shall be accompanied by  
32 a notice, in a typeface designed to call attention to the  
33 notice, indicating that (1) employment records about the  
34 employee are being sought from the witness named on  
35 the subpoena; (2) the employment records may be  
36 protected by a right of privacy; (3) if the employee  
37 objects to the witness furnishing the records to the party  
38 seeking the records the employee shall file papers with  
39 the court prior to the date specified for production on the  
40 subpoena; and (4) if the subpoenaing party does not



1 agree in writing to cancel or limit the subpoena, an  
2 attorney should be consulted about the employee's  
3 interest in protecting his or her rights of privacy. If a  
4 notice of taking of deposition is also served, that other  
5 notice may be set forth in a single document with the  
6 notice required by this subdivision.

7 (f) Any employee whose employment records are  
8 sought by a subpoena duces tecum may, prior to the date  
9 for production, bring a motion under Section 1987.1 to  
10 quash or modify the subpoena duces tecum. Notice of the  
11 bringing of that motion shall be given to the witness and  
12 the deposition officer at least five days prior to  
13 production. The failure to provide notice to the  
14 deposition officer shall not invalidate the motion to quash  
15 or modify the subpoena duces tecum but may be raised  
16 by the deposition officer as an affirmative defense ~~on~~ *in*  
17 any action for liability for improper release of records.

18 Any nonparty employee whose employment records  
19 are sought by a subpoena duces tecum may, prior to the  
20 date of production, serve on the subpoenaing party, and  
21 the deposition officer, the witness a written objection that  
22 cites the specific grounds on which production of the  
23 employment records should be prohibited.

24 No witness or deposition officer shall be required to  
25 produce employment records after receipt of notice that  
26 the motion has been brought by an employee, or after  
27 receipt of a written objection from a nonparty employee,  
28 except upon order of the court in which the action is  
29 pending or by agreement of the parties, witnesses, and  
30 employees affected.

31 The party requesting an employee's employment  
32 records may bring a motion under subdivision (c) of  
33 Section 1987 to enforce the subpoena within 20 days of  
34 service of the written objection. The motion shall be  
35 accompanied by a declaration showing a reasonable and  
36 good faith attempt at informal resolution of the dispute  
37 between the party requesting the employment records  
38 and the employee or the employee's attorney.

39 (g) Upon good cause shown and provided that the  
40 rights of witness and employees are preserved, a

1 subpoenaing party shall be entitled to obtain an order  
2 shortening the time for service of a subpoena duces  
3 tecum or waiving the requirements of subdivision (b)  
4 where due diligence by the subpoenaing party has been  
5 shown.

6 (h) Nothing contained in this section shall be  
7 construed to apply to any subpoena duces tecum which  
8 does not request the records of any particular employee  
9 or employees and which requires a custodian of records  
10 to delete all information which would in any way identify  
11 any employee whose records are to be produced.

12 (i) This section shall not apply to proceedings  
13 conducted under Division 1 (commencing with Section  
14 50), Division 4 (commencing with Section 3200), Division  
15 4.5 (commencing with Section 6100), or Division 4.7  
16 (commencing with Section 6200) of the Labor Code.

17 (j) Failure to comply with this section shall be  
18 sufficient basis for the witness to refuse to produce the  
19 employment records sought by subpoena duces tecum.

20 SEC. 3. Section 2020 of the Code of Civil Procedure is  
21 amended to read:

22 2020. (a) The method for obtaining discovery within  
23 the state from one who is not a party to the action is an  
24 oral deposition under Section 2025, a written deposition  
25 under Section 2028, or a deposition for production of  
26 business records and things under subdivisions (d) and  
27 (e). Except as provided in paragraph (1) of subdivision  
28 (h) of Section 2025, the process by which a nonparty is  
29 required to provide discovery is a deposition subpoena.  
30 The deposition subpoena may command any of the  
31 following:

32 (1) Only the attendance and the testimony of the  
33 deponent, under subdivision (c).

34 (2) Only the production of business records for  
35 copying, under subdivision (d).

36 (3) Both the attendance and the testimony of the  
37 deponent, as well as the production of business records,  
38 other documents, and tangible things, under subdivision  
39 (e).

1 Except as modified in this section, the provisions of  
2 Chapter 2 (commencing with Section 1985), and of  
3 Article 4 (commencing with Section 1560) of Chapter 2  
4 of Division 11 of the Evidence Code, apply to a deposition  
5 subpoena.

6 (b) The clerk of the court in which the action is  
7 pending shall issue a deposition subpoena signed and  
8 sealed, but otherwise in blank, to a party requesting it,  
9 who shall fill it in before service. In lieu of the court-issued  
10 deposition subpoena, an attorney of record for any party  
11 may sign and issue a deposition subpoena; the deposition  
12 subpoena in that case need not be sealed, a copy may be  
13 served on the nonparty, and the attorney may retain the  
14 original.

15 (c) A deposition subpoena that commands only the  
16 attendance and the testimony of the deponent shall  
17 specify the time when and the place where the deponent  
18 is commanded to attend for the deposition. It shall set  
19 forth a summary of (1) the nature of a deposition, (2) the  
20 rights and duties of the deponent, and (3) the penalties  
21 for disobedience of a deposition subpoena described in  
22 subdivision (h). If the deposition will be recorded by  
23 videotape under paragraph (2) of subdivision (l) of  
24 Section 2025, the deposition subpoena shall state that it  
25 will be recorded in that manner. If the deponent is an  
26 organization, the deposition subpoena shall describe with  
27 reasonable particularity the matters on which  
28 examination is requested, and shall advise that  
29 organization of its duty to make the designation of  
30 employees or agents who will attend described in  
31 subdivision (d) of Section 2025.

32 (d) (1) A deposition subpoena that commands only  
33 the production of business records for copying shall  
34 designate the business records to be produced either by  
35 specifically describing each individual item or by  
36 reasonably particularizing each category of item;  
37 however, specific information identifiable only to the  
38 deponent's records system, such as a policy number or the  
39 date the consumer interacted with the witness, shall not  
40 be required. This deposition subpoena need not be

1 accompanied by an affidavit or declaration showing good  
2 cause for the production of the business records  
3 designated in it. It shall be directed to the custodian of  
4 those records or another person qualified to certify the  
5 records. It shall command compliance in accordance with  
6 paragraph (4) on a date that is no earlier than 20 days  
7 after the issuance, or 15 days after the service, of the  
8 deposition subpoena, whichever date is later.

9 (2) If, under Section 1985.3 or 1985.6, the one to whom  
10 the deposition subpoena is directed is a witness, and the  
11 business records described in the deposition subpoena are  
12 personal records pertaining to a consumer, the service of  
13 the deposition subpoena shall be accompanied either by  
14 a copy of the proof of service of the notice to the  
15 consumer described in subdivision (e) of Section 1985.3,  
16 or subdivision (b) of Section 1985.6, as applicable, or by  
17 the consumer's written authorization to release personal  
18 records described in paragraph (2) of subdivision (c) of  
19 Section 1985.3, or paragraph (2) of subdivision (c) of  
20 Section 1985.6, as applicable.

21 (3) The officer for a deposition seeking discovery only  
22 of business records for copying under this subdivision  
23 shall be a professional photocopier registered under  
24 Chapter 20 (commencing with Section 22450) of Division  
25 8 of the Business and Professions Code, or a person  
26 exempted from the registration requirements of that  
27 chapter under Section 22451 of the Business and  
28 Professions Code. This deposition officer shall not be  
29 financially interested in the action, or a relative or  
30 employee of any attorney of the parties. Any objection to  
31 the qualifications of the deposition officer is waived unless  
32 made before the date of production or as soon thereafter  
33 as the ground for that objection becomes known or could  
34 be discovered by reasonable diligence.

35 (4) Unless directed to make the records available for  
36 inspection or copying by the subpoenaing party's  
37 attorney or a representative of that attorney at the  
38 witness' business address under subdivision (e) of Section  
39 1560 of the Evidence Code, the custodian of the records  
40 or other qualified person shall, in person, by messenger,

1 or by mail, deliver only to the deposition officer specified  
2 in the deposition subpoena (1) a true, legible, and durable  
3 copy of the records, and (2) an affidavit in compliance  
4 with Section 1561 of the Evidence Code. If this delivery  
5 is made to the office of the deposition officer, the records  
6 shall be enclosed, sealed, and directed as described in  
7 subdivision (c) of Section 1560 of the Evidence Code. If  
8 this delivery is made at the office of the business whose  
9 records are the subject of the deposition subpoena, the  
10 custodian of those records or other qualified person shall  
11 (1) permit the deposition officer specified in the  
12 deposition subpoena to make a copy of the originals of the  
13 designated business records during normal business hours  
14 as defined in subdivision (e) of Section 1560 of the  
15 Evidence Code, or (2) deliver to that deposition officer  
16 a true, legible, and durable copy of the records on receipt  
17 of payment in cash or by check, by or on behalf of the  
18 party serving the deposition subpoena, of the reasonable  
19 costs of preparing that copy, and an itemized statement  
20 for the cost of preparation, as determined under  
21 subdivision (b) of Section 1563 of the Evidence Code.  
22 This copy need not be delivered in a sealed envelope.  
23 Unless the parties, and if the records are those of a  
24 consumer as defined in Section 1985.3 or 1985.6, the  
25 consumer, stipulate to an earlier date, the custodian of the  
26 records shall not deliver to the deposition officer the  
27 records that are the subject of the deposition subpoena  
28 prior to the date and time specified in the deposition  
29 subpoena. The following legend shall appear in boldface  
30 type on the deposition subpoena immediately following  
31 the date and time specified for production: "Do not  
32 release the requested records to the deposition officer  
33 prior to the date and time stated above."  
34 (5) Promptly on or after the deposition date and after  
35 the receipt or the making of a copy of business records  
36 under this subdivision, the deposition officer shall provide  
37 that copy to the party at whose instance the deposition  
38 subpoena was served, and a copy of those records to any  
39 other party to the action who then or subsequently,  
40 within a period of six months following the settlement of

1 the case, notifies the deposition officer that the party  
2 desires to purchase a copy of those records.

3 (6) The provisions of Section 1562 of the Evidence  
4 Code concerning the admissibility of the affidavit of the  
5 custodian or other qualified person apply to a deposition  
6 subpoena served under this subdivision.

7 (e) A deposition subpoena that commands both the  
8 attendance and the testimony of the deponent, as well as  
9 the production of business records, documents, and  
10 tangible things, shall (1) comply with the requirements  
11 of subdivision (c), (2) designate the business records,  
12 documents, and tangible things to be produced either by  
13 specifically describing each individual item or by  
14 reasonably particularizing each category of item, and (3)  
15 specify any testing or sampling that is being sought. This  
16 deposition subpoena need not be accompanied by an  
17 affidavit or declaration showing good cause for the  
18 production of the documents and things designated.

19 Where, as described in Section 1985.3, the person to  
20 whom the deposition subpoena is directed is a witness,  
21 and the business records described in the deposition  
22 subpoena are personal records pertaining to a consumer,  
23 the service of the deposition subpoena shall be  
24 accompanied either by a copy of the proof of service of  
25 the notice to the consumer described in subdivision (e)  
26 of Section 1985.3, or by the consumer's written  
27 authorization to release personal records described in  
28 paragraph (2) of subdivision (c) of Section 1985.3.

29 (f) Subject to paragraph (1) of subdivision (d), service  
30 of a deposition subpoena shall be effected a sufficient  
31 time in advance of the deposition to provide the  
32 deponent a reasonable opportunity to locate and produce  
33 any designated business records, documents, and tangible  
34 things, as described in subdivision (d), and, where  
35 personal attendance is commanded, a reasonable time to  
36 travel to the place of deposition. Any person may serve  
37 the subpoena by personal delivery of a copy of it (1) if the  
38 deponent is a natural person, to that person, and (2) if the  
39 deponent is an organization, to any officer, director,  
40 custodian of records, or to any agent or employee

1 authorized by the organization to accept service of a  
2 subpoena.

3 If a deposition subpoena requires the personal  
4 attendance of the deponent, under subdivision (c) or (e),  
5 the party noticing the deposition shall pay to the  
6 deponent in cash or by check the same witness fee and  
7 mileage required by Chapter 1 (commencing with  
8 Section 68070) of Title 8 of the Government Code for  
9 attendance and testimony before the court in which the  
10 action is pending. This payment, whether or not  
11 demanded by the deponent, shall be made, at the option  
12 of the party noticing the deposition, either at the time of  
13 service of the deposition subpoena, or at the time the  
14 deponent attends for the taking of testimony.

15 Service of a deposition subpoena that does not require  
16 the personal attendance of a custodian of records or other  
17 qualified person, under subdivision (d), shall be  
18 accompanied, whether or not demanded by the  
19 deponent, by a payment in cash or by check of the witness  
20 fee required by paragraph (6) of subdivision (b) of  
21 Section 1563 of the Evidence Code.

22 (g) Personal service of any deposition subpoena is  
23 effective to require of any deponent who is a resident of  
24 California at the time of service (1) personal attendance  
25 and testimony, if the subpoena so specifies, (2) any  
26 specified production, inspection, testing, and sampling,  
27 and (3) the deponent's attendance at a court session to  
28 consider any issue arising out of the deponent's refusal to  
29 be sworn, or to answer any question, or to produce  
30 specified items, or to permit inspection or photocopying,  
31 if the subpoena so specifies, or specified testing and  
32 sampling of the items produced.

33 (h) A deponent who disobeys a deposition subpoena in  
34 any manner described in subdivision (g) may be  
35 punished for contempt under Section 2023 without the  
36 necessity of a prior order of court directing compliance  
37 by the witness, and is subject to the forfeiture and the  
38 payment of damages set forth in Section 1992.

39 SEC. 4. Section 1560 of the Evidence Code is  
40 amended to read:



1 1560. (a) As used in this article:

2 (1) “Business” includes every kind of business  
3 described in Section 1270.

4 (2) “Record” includes every kind of record  
5 maintained by a business.

6 (b) Except as provided in Section 1564, when a  
7 subpoena duces tecum is served upon the custodian of  
8 records or other qualified witness of a business in an  
9 action in which the business is neither a party nor the  
10 place where any cause of action is alleged to have arisen,  
11 and the subpoena requires the production of all or any  
12 part of the records of the business, it is sufficient  
13 compliance therewith if the custodian or other qualified  
14 witness, within five days after the receipt of the subpoena  
15 in any criminal action or within the time agreed upon by  
16 the party who served the subpoena and the custodian or  
17 other qualified witness, or within 15 days after the receipt  
18 of the subpoena in any civil action or within the time  
19 agreed upon by the party who served the subpoena and  
20 the custodian or other qualified witness, delivers by mail  
21 or otherwise a true, legible, and durable copy of all the  
22 records described in the subpoena to the clerk of the  
23 court or to the judge if there be no clerk or to ~~such other~~  
24 ~~person as another person~~ described in subdivision (c) of  
25 Section 2026 of the Code of Civil Procedure, together  
26 with the affidavit described in Section 1561.

27 (c) The copy of the records shall be separately  
28 enclosed in an inner envelope or wrapper, sealed, with  
29 the title and number of the action, name of witness, and  
30 date of subpoena clearly inscribed thereon; the sealed  
31 envelope or wrapper shall then be enclosed in an outer  
32 envelope or wrapper, sealed, and directed as follows:

33 (1) If the subpoena directs attendance in court, to the  
34 clerk of the court, or to the judge thereof if there be no  
35 clerk.

36 (2) If the subpoena directs attendance at a deposition,  
37 to the officer before whom the deposition is to be taken,  
38 at the place designated in the subpoena for the taking of  
39 the deposition or at the officer’s place of business.



(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as ~~defined~~ *described* in paragraph (3) of subdivision (d) of Section 2020 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public.

~~A witness may not restrict the hours for inspecting or copying records during normal business hours, or require that specific appointments be made to inspect or copy records, except that, in cases in which the subpoenaing party has directed the witness to make the records available for inspection or copying, organizations with 10 or fewer employees may limit the hours for inspection or copying to any continuous four-hour period on each business day. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's~~

1 *representative or deposition officer.* It shall be the  
2 responsibility of the attorney's representative to deliver  
3 any copy of the records as directed in the subpoena.  
4 Disobedience to the deposition subpoena issued pursuant  
5 to this subdivision is punishable as provided in subdivision  
6 (h) of Section 2020.

7 SEC. 5. Section 1561 of the Evidence Code is  
8 amended to read:

9 1561. (a) The records shall be accompanied by the  
10 affidavit of the custodian or other qualified witness,  
11 stating in substance each of the following:

12 (1) The affiant is the duly authorized custodian of the  
13 records or other qualified witness and has authority to  
14 certify the records.

15 (2) The copy is a true copy of all the records described  
16 in the subpoena duces tecum, or pursuant to subdivision  
17 (e) of Section 1560 the records were delivered to the  
18 attorney, the attorney's representative, or deposition  
19 officer for copying at the custodian's or witness' place of  
20 business, as the case may be.

21 (3) The records were prepared by the personnel of the  
22 business in the ordinary course of business at or near the  
23 time of the act, condition, or event.

24 (4) The identity of the records.

25 (5) A description of the mode of preparation of the  
26 records.

27 (b) If the business has none of the records described,  
28 or only part thereof, the custodian or other qualified  
29 witness shall so state in the affidavit, and deliver the  
30 affidavit and those records that are available in one of the  
31 manners provided in Section 1560.

32 (c) Where the records described in the subpoena were  
33 delivered to the attorney or his or her representative or  
34 deposition officer for copying at the custodian's or  
35 witness' place of business, in addition to the affidavit  
36 required by subdivision (a), the records shall be  
37 accompanied by an affidavit by the attorney or his or her  
38 representative or deposition officer stating that the copy  
39 is a true copy of all the records delivered to the attorney

1 or his or her representative or deposition officer for  
2 copying.

3 SEC. 6. Section 1563 of the Evidence Code is  
4 amended to read:

5 1563. (a) This article shall not be interpreted to  
6 require tender or payment of more than one witness fee  
7 and one mileage fee or other charge, to a witness or  
8 witness' business, unless there is an agreement to the  
9 contrary between the witness and the requesting party.

10 (b) All reasonable costs incurred in a civil proceeding  
11 by any witness which is not a party with respect to the  
12 production of all or any part of business records the  
13 production of which is requested pursuant to a subpoena  
14 duces tecum may be charged against the party serving  
15 the subpoena duces tecum.

16 (1) "Reasonable cost," as used in this section, shall  
17 include, but not be limited to, the following specific costs:  
18 ten cents (\$0.10) per page for standard reproduction of  
19 documents of a size 8½ by 14 inches or less; twenty cents  
20 (\$0.20) per page for copying of documents from  
21 microfilm; actual costs for the reproduction of oversize  
22 documents or the reproduction of documents requiring  
23 special processing which are made in response to a  
24 subpoena; reasonable clerical costs incurred in locating  
25 and making the records available to be billed at the  
26 maximum rate of ~~sixteen dollars (\$16)~~ *twenty-four*  
27 *dollars (\$24)* per hour per person, computed on the basis  
28 of ~~four dollars (\$4)~~ *six dollars (\$6)* per quarter hour or  
29 fraction thereof; actual postage charges; and the actual  
30 cost, if any, charged to the witness by a third person for  
31 the retrieval and return of records held offsite by that  
32 third person.

33 (2) The requesting party, or the requesting party's  
34 deposition officer, shall not be required to pay those costs  
35 or any estimate thereof prior to the time the records are  
36 available for delivery pursuant to the subpoena, but the  
37 witness may demand payment of costs pursuant to this  
38 section simultaneous with actual delivery of the  
39 subpoenaed records, and until payment is made, is under  
40 no obligation to deliver the records.

1 (3) The witness shall submit an itemized statement for  
2 the costs to the requesting party, or the requesting party's  
3 deposition officer, setting forth the reproduction and  
4 clerical costs incurred by the witness. Should the costs  
5 exceed those authorized in paragraph (1), or the witness  
6 refuses to produce an itemized statement of costs as  
7 required by paragraph (3), upon demand by the  
8 requesting party, or the requesting party's deposition  
9 officer, the witness shall furnish a statement setting forth  
10 the actions taken by the witness in justification of the  
11 costs.

12 (4) The requesting party may petition the court in  
13 which the action is pending to recover from the witness  
14 all or a part of the costs paid to the witness, or to reduce  
15 all or a part of the costs charged by the witness, pursuant  
16 to this subdivision, on the grounds that those costs were  
17 excessive. Upon the filing of the petition the court shall  
18 issue an order to show cause and from the time the order  
19 is served on the witness the court has jurisdiction over the  
20 witness. The court may hear testimony on the order to  
21 show cause and if it finds that the costs demanded and  
22 collected, or charged but not collected, exceed the  
23 amount authorized by this subdivision, it shall order the  
24 witness to remit to the requesting party, or reduce its  
25 charge to the requesting party by an amount equal to, the  
26 amount of the excess. In the event that the court finds the  
27 costs excessive and charged in bad faith by the witness,  
28 the court shall order the witness to remit the full amount  
29 of the costs demanded and collected, or excuse the  
30 requesting party from any payment of costs charged but  
31 not collected, and the court shall also order the witness to  
32 pay the requesting party the amount of the reasonable  
33 expenses incurred in obtaining the order including  
34 attorney's fees. If the court finds the costs were not  
35 excessive, the court shall order the requesting party to  
36 pay the witness the amount of the reasonable expenses  
37 incurred in defending the petition, including attorney's  
38 fees.

39 (5) If a subpoena is served to compel the production  
40 of business records and is subsequently withdrawn, or is

1 quashed, modified or limited on a motion made other  
2 than by the witness, the witness shall be entitled to  
3 reimbursement pursuant to paragraph (1) for all costs  
4 incurred in compliance with the subpoena to the time  
5 that the requesting party has notified the witness that the  
6 subpoena has been withdrawn or quashed, modified or  
7 limited. In the event the subpoena is withdrawn or  
8 quashed, if those costs are not paid within 30 days after  
9 demand therefor, the witness may file a motion in the  
10 court in which the action is pending for an order  
11 requiring payment, and the court shall award the  
12 payment of expenses and attorney's fees in the manner  
13 set forth in paragraph (4).

14 (6) Where the records are delivered to the attorney,  
15 the attorney's representative, or the deposition officer for  
16 inspection or photocopying at the witness' place of  
17 business, the only fee for complying with the subpoena  
18 shall not exceed fifteen dollars (\$15), plus the actual cost,  
19 if any, charged to the witness by a third person for  
20 retrieval and return of records held offsite by that third  
21 person. If the records are retrieved from microfilm, the  
22 reasonable cost, as defined in paragraph (1), shall also  
23 apply.

24 (c) When the personal attendance of the custodian of  
25 a record or other qualified witness is required pursuant  
26 to Section 1564, in a civil proceeding, he or she shall be  
27 entitled to the same witness fees and mileage permitted  
28 in a case where the subpoena requires the witness to  
29 attend and testify before a court in which the action or  
30 proceeding is pending and to any additional costs  
31 incurred as provided by subdivision (b).

32 SEC. 7. Section 4055.2 of the Labor Code is amended  
33 to read:

34 4055.2. Any party who subpoenas records in any  
35 proceeding under this division shall concurrent with  
36 service of the subpoena upon the person who has  
37 possession of the records, send a copy of the subpoena to  
38 all parties of record in the proceeding.

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